

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

In the matter of

HCH ENTERPRISE, L.L.C  
5952 West Gail Drive  
Chandler, Arizona 85226

DOCKET NO. S-03540A-04-0000

DECISION NO. 67219

HELEN C. HARTZE and JOHN DOE HARTZE,  
husband and wife  
5952 West Gail Drive  
Chandler, Arizona 85226

**ORDER TO CEASE AND DESIST,  
ORDER OF RESTITUTION, ORDER  
FOR ADMINISTRATIVE PENALTIES  
AND FOR OTHER AFFIRMATIVE  
ACTION AND CONSENT TO SAME  
BY: MARK KESLER**

MARK KESLER and JANE DOE KESLER,  
husband and wife  
10783 W. Encanto Blvd  
Avondale, Arizona 85323

RESPONDENTS.

RESPONDENT MARK KESLER (“KESLER”) elects to permanently waive his right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.* (“Securities Act”) with respect to this Order To Cease And Desist, Order Of Restitution, Order For Administrative Penalties and For Other Affirmative Action and Consent To Same (“Order”). KESLER admits the jurisdiction of the Arizona Corporation Commission (“Commission”); neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the Commission.

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**I****FINDINGS OF FACT**

1. HCH ENTERPRISE, L.L.C. ("HCH"), was at all relevant times an Arizona limited liability company organized in August of 2002. HELEN C. HARTZE ("HCH") is the statutory agent and sole member of HCH. HCH is the statutory agent of two investor entities, Ashberry Apartments, L.L.C. ("Ashberry") and Williamsburg Apartments L.L.C. ("Williamsburg"). HCH is the Trustee of 1112 Ashberry Trust dated November 14, 2002 and 1221 Jackson Lane Trust dated November 1, 2002.

2. HARTZE was at all relevant times the statutory agent and sole member of HCH. Since December 12, 2001, HARTZE has been a licensed mortgage broker with the Arizona Department of Banking doing business under the name HCH.

3. KESLER was at all relevant times a sales person with HCH. On September 5, 2002, the Commission issued a Temporary Cease and Desist order against a number of Respondents including KESLER, Docket No. S-03491A-02-0000. KESLER is a named Defendant in a pending Maricopa County Superior Court action, *Arizona Corporation Commission v. American National Mortgage Partners L.L.C. et al.*, CV2003-005724.

4. Beginning in about October of 2002 through January of 2003, KESLER, directly or indirectly, offered and sold interests in two different investment opportunities raising approximately \$360,000 from about nine individuals. The investment opportunities involved interests in two different Arizona limited liability companies ("L.L.C."), Ashberry and Williamsburg.

5. HARTZE was employed with American National Mortgage Partners L.L.C. ("ANMP") and was the Responsible Person under ANMP's mortgage banking license while operating HCH. KESLER was salesperson for ANMP before and during the time he was involved with HCH.

6. Similar to ANMP, the Ashberry and Williamsburg investments involved raising money from investors to fund loans secured by real property. Investors were placed in an L.L.C. and

1 the L.L.C. funded the loans. HCH, HARTZE and KESLER located individuals or entities in need of  
2 funds and who had equity in real property to secure the loans. In this matter, the funds were raised for  
3 one Borrower ("Borrower").

4 7. HCH and HARTZE directed KESLER to contact previous investors in ANMP, to  
5 offer those investors an investment opportunity similar to ANMP but through HCH. These investors  
6 believed that HCH was part of or connected in some way with ANMP. The Borrower, who also had  
7 loans with ANMP, indicated that he did not see a difference between ANMP and HCH

8 8. HCH and HARTZE, formed two Trusts, 1112 Ashberry Trust dated November 11, 2002  
9 and 1221 Jackson Lane Trust dated November 11, 2002. HCH was the Trustee of the two Trusts. The  
10 Borrower would complete documentation transferring the beneficial interests in their property to the  
11 Trust and the investors, through a limited liability company created by HCH and HARTZE, would  
12 become the second beneficiary on the Trust. The Borrower also signed a promissory note setting  
13 forth the terms of repayment and interest rate.

14 9. Although both Ashberry and Williamsburg were represented to be member-managed  
15 L.L.C.'s, the investors did not have management control over the L.L.C.'s. According to the  
16 documents provided to the investors, the principal place of business of the L.L.C.'s was HCH. The  
17 books and records of the L.L.C.s were located at HCH. HCH was the trustee of the trusts and the  
18 payments from the Borrower were to be made to HCH. Most of the funds raised from investors,  
19 whether they were members of Ashberry or Williamsburg, were deposited into the HCH bank  
20 accounts. HARTZE was the sole signatory on the HCH account.

21 10. According to the investors and the offering documents, the investment would be  
22 secured by real property. However, the final documents signed by the Borrower and the Trustee  
23 indicate that the documents would not be recorded unless the Borrower defaulted on the loans.

24 11. At no time were investors informed that they were to replace HCH as the Trustee of the  
25 Trusts. The investors were not informed that it was their responsibility to record their interest in the  
26 real property if there was a default by the Borrower. In fact, the investors did not know their interests

1 would not be recorded against the property until or unless there was a default. The investors were not  
2 provided complete investor records to allow them to independently contact the other members of the  
3 L.L.C. in order to take control of the L.L.C. and complete its business activities.

4 12. KESLER failed to notify the investors that he was under a Temporary Cease and Desist  
5 order issued just one month prior to selling the investments with HCH.

6 13. The Borrower sought \$405,000 from the investors in the Ashberry investment. Starting in  
7 November of 2002 through January of 2003, the Ashberry investment raised approximately \$245,000  
8 from about seven investors. The investment was to be secured by an interest in an apartment complex  
9 located in Columbus, Ohio. However, there was an agreement with the Borrower whereby the  
10 investors' interest would only be recorded when and if there was a default on the loans.

11 14. In November of 2002, the Borrower sought \$115,000 from the investors. The  
12 Williamsburg investment raised approximately \$115,000 from two investors in November of 2002.  
13 The investment was to be secured by an interest in an apartment complex located in Middletown,  
14 Ohio.

15 15. The Borrower defaulted on the notes and the investors have not received a return of their  
16 investment nor has their interest in the real property been recorded to secure their interests.

## 17 **II.**

### 18 **CONCLUSIONS OF LAW**

19 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona  
20 Constitution and the Securities Act.

21 2. KESLER offered or sold securities within or from Arizona, within the meaning of  
22 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

23 3. KESLER violated A.R.S. § 44-1841 by offering or selling securities that were neither  
24 registered nor exempt from registration.

25 4. KESLER violated A.R.S. § 44-1842 by offering or selling securities while neither  
26 registered as dealer or salesman nor exempt from registration.

7. KESLER'S conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

9	III.
10	ORDER

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that KESLER, his agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

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1 be deemed in default and shall be immediately due and payable without notice or demand.  
2 Acceptance of a late or partial payment is not a waiver of the default. Any payments by the  
3 Borrower, HCH or HARTZE will offset the restitution amount owed by KESLER.

4 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that KESLER shall pay an  
5 administrative penalty in the amount of \$15,000, payable to the “State of Arizona.” Payment shall  
6 be made in full by cashier’s check or money order on the date of this Order. If KESLER does not  
7 comply with this order for administrative penalties, any outstanding balance may be deemed in  
8 default and shall be immediately due and payable without notice or demand.

9 IT IS FURTHER ORDERED, any funds received will go to the restitution order then to the  
10 administrative penalty.

11 IT IS FURTHER ORDERED that this Order shall become effective immediately.

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

14	<u>/s/ Marc Spitzer</u>	<u>William A. Mundell</u>	<u>Jeffrey Hatch-Miller</u>
15	CHAIRMAN	COMMISSIONER	COMMISSIONER
16	<u>Lowell Gleason</u>	<u>Kristin Mayes</u>	
	COMMISSIONER	COMMISSIONER	

17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
18 Executive Secretary of the Arizona Corporation  
19 Commission, have hereunto set my hand and caused the  
20 official seal of the Commission to be affixed at the  
21 Capitol, in the City of Phoenix, this 24th day of  
August, 2004

22 /s/ Brian C. McNeil  
23 BRIAN C. McNEIL  
24 Executive Secretary

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26 DISSENT

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This document is available in alternative formats by contacting Yvonne L. McFarlin, Executive Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail [ymcfarlin@cc.state.az.us](mailto:ymcfarlin@cc.state.az.us).  
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**CONSENT TO ENTRY OF ORDER**

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2 1. MARK KESLER, an individual, admits the jurisdiction of the Commission over the  
3 subject matter of this proceeding. MARK KESLER acknowledges that he has been fully advised  
4 of his right to a hearing to present evidence and call witnesses and MARK KESLER knowingly  
5 and voluntarily waives any and all rights to a hearing before the Commission and all other rights  
6 otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona  
7 Administrative Code. MARK KESLER acknowledges that this Order To Cease and Desist, Order  
8 Of Restitution, Order For Administrative Penalties and For Other Affirmative Action and Consent  
9 To Same ("Order") constitutes a valid final order of the Commission.

10 2. MARK KESLER knowingly and voluntarily waives any right he may have under  
11 Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or  
12 extraordinary relief resulting from the entry of this Order.

13 3. MARK KESLER acknowledges and agrees that this Order is entered into freely and  
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. MARK KESLER acknowledges that he has been represented by counsel in this matter,  
16 he has reviewed this Order with his attorney and understands all terms it contains.

17 5. MARK KESLER neither admits nor denies the Findings of Fact and Conclusions of  
18 Law contained in this Order.

19 6. By consenting to the entry of this Order, MARK KESLER agrees not to take any action  
20 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding  
21 of Fact or Conclusion of Law in this Order or to create the impression that this Order is without  
22 factual basis. MARK KESLER will undertake steps necessary to assure that all of his agents and  
23 employees understand and comply with this agreement.

24 7. While this Order settles this administrative matter between MARK KESLER and the  
25 Commission, MARK KESLER understands that this Order does not preclude the Commission  
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1 from instituting other administrative proceedings based on violations that are not addressed by this  
2 Order.

3 8. MARK KESLER understands that this Order does not preclude the Commission from  
4 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
5 that may be related to the matters addressed by this Order.

6 9. MARK KESLER understands that this Order does not preclude any other agency or  
7 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal  
8 proceedings that may be related to matters addressed by this Order.

9 10. MARK KESLER agrees that he will not exercise any control over any entity that offers  
10 or sells securities or provides investment advisory services, within or from Arizona.

11 11. MARK KESLER agrees that until restitution and penalties are paid in full, MARK  
12 KESLER will notify the Director of the Securities Division within 30 days of any change in home  
13 address or any change in MARK KESLER's ability to pay amounts due under this Order.

14 12. MARK KESLER understands that default shall render him liable to the Commission  
15 for its costs of collection and interest at the maximum legal rate.

16 13. MARK KESLER agrees that he will continue to cooperate with the Securities Division  
17 including, but not limited to, providing complete and accurate testimony at any hearing in this  
18 matter and cooperating with the state of Arizona in any related investigation or any other matters  
19 arising from the activities described in this Order.

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14. MARK KESLER consents to the entry of this Order and agrees to be fully bound by its terms and conditions.

/s/ Mark Kesler

MARK KESLER

SUBSCRIBED AND SWORN TO BEFORE me this 5 day of August, 2004.

/s/ Cynthia A. Jansen

NOTARY PUBLIC

My Commission Expires:

April 14, 2006